

Effective 5/4/2022

Chapter 40a Expungement

Part 1 General Provisions

77-40a-101 Definitions.

As used in this chapter:

- (1) "Agency" means a state, county, or local government entity that generates or maintains records relating to an investigation, arrest, detention, or conviction for an offense for which expungement may be ordered.
- (2) "Bureau" means the Bureau of Criminal Identification of the Department of Public Safety established in Section 53-10-201.
- (3) "Certificate of eligibility" means a document issued by the bureau stating that the criminal record and all records of arrest, investigation, and detention associated with a case that is the subject of a petition for expungement is eligible for expungement.
- (4)
 - (a) "Clean slate eligible case" means, except as provided in Subsection (4)(c), a case:
 - (i) where each conviction within the case is:
 - (A) a misdemeanor conviction for possession of a controlled substance in violation of Subsection 58-37-8(2)(a)(i);
 - (B) a class B or class C misdemeanor conviction; or
 - (C) an infraction conviction;
 - (ii) that involves an individual:
 - (A) whose total number of convictions in Utah state courts, not including infractions, traffic offenses, or minor regulatory offenses, does not exceed the limits described in Subsections 77-40a-303(4) and (5) without taking into consideration the exception in Subsection 77-40a-303(7); and
 - (B) against whom no criminal proceedings are pending in the state; and
 - (iii) for which the following time periods have elapsed from the day on which the case is adjudicated:
 - (A) at least five years for a class C misdemeanor or an infraction;
 - (B) at least six years for a class B misdemeanor; and
 - (C) at least seven years for a class A conviction for possession of a controlled substance in violation of Subsection 58-37-8(2)(a)(i).
 - (b) "Clean slate eligible case" includes a case:
 - (i) that is dismissed as a result of a successful completion of a plea in abeyance agreement governed by Subsection 77-2a-3(2)(b) if:
 - (A) except as provided in Subsection (4)(c), each charge within the case is a misdemeanor for possession of a controlled substance in violation of Subsection 58-37-8(2)(a)(i), a class B or class C misdemeanor, or an infraction;
 - (B) the individual involved meets the requirements of Subsection (4)(a)(ii); and
 - (C) the time periods described in Subsections (4)(a)(iii)(A) through (C) have elapsed from the day on which the case is dismissed; or

- (ii) where charges are dismissed without prejudice if each conviction, or charge that was dismissed, in the case would otherwise meet the requirements under Subsection (4)(a) or (b)(i).
- (c) "Clean slate eligible case" does not include a case:
 - (i) where the individual is found not guilty by reason of insanity;
 - (ii) where the case establishes a criminal accounts receivable, as defined in Section 77-32b-102, that:
 - (A) has been entered as a civil accounts receivable or a civil judgment of restitution, as those terms are defined in Section 77-32b-102, and transferred to the Office of State Debt Collection under Section 77-18-114; or
 - (B) has not been satisfied according to court records; or
 - (iii) that resulted in one or more pleas held in abeyance or convictions for the following offenses:
 - (A) any of the offenses listed in Subsection 77-40a-303(2)(a);
 - (B) an offense against the person in violation of Title 76, Chapter 5, Offenses Against the Individual;
 - (C) a weapons offense in violation of Title 76, Chapter 10, Part 5, Weapons;
 - (D) sexual battery in violation of Section 76-9-702.1;
 - (E) an act of lewdness in violation of Section 76-9-702 or 76-9-702.5;
 - (F) an offense in violation of Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving;
 - (G) damage to or interruption of a communication device in violation of Section 76-6-108;
 - (H) a domestic violence offense as defined in Section 77-36-1; or
 - (I) any other offense classified in the Utah Code as a felony or a class A misdemeanor other than a class A misdemeanor conviction for possession of a controlled substance in violation of Subsection 58-37-8(2)(a)(i).
- (5) "Conviction" means judgment by a criminal court on a verdict or finding of guilty after trial, a plea of guilty, or a plea of nolo contendere.
- (6) "Criminal protective order" means the same as that term is defined in Section 78B-7-102.
- (7) "Criminal stalking injunction" means the same as that term is defined in Section 78B-7-102.
- (8) "Department" means the Department of Public Safety established in Section 53-1-103.
- (9) "Drug possession offense" means an offense under:
 - (a) Subsection 58-37-8(2), except:
 - (i) any offense under Subsection 58-37-8(2)(b)(i), possession of 100 pounds or more of marijuana;
 - (ii) any offense enhanced under Subsection 58-37-8(2)(e), violation in a correctional facility; or
 - (iii) driving with a controlled substance illegally in the person's body and negligently causing serious bodily injury or death of another, as codified before May 4, 2022, Laws of Utah 2021, Chapter 236, Section 1, Subsection 58-37-8(2)(g);
 - (b) Subsection 58-37a-5(1), use or possession of drug paraphernalia;
 - (c) Section 58-37b-6, possession or use of an imitation controlled substance; or
 - (d) any local ordinance which is substantially similar to any of the offenses described in this Subsection (9).
- (10) "Expunge" means to seal or otherwise restrict access to the individual's record held by an agency when the record includes a criminal investigation, detention, arrest, or conviction.
- (11) "Jurisdiction" means a state, district, province, political subdivision, territory, or possession of the United States or any foreign country.
- (12)

- (a) "Minor regulatory offense" means, except as provided in Subsection (12)(c), a class B or C misdemeanor offense or a local ordinance.
- (b) "Minor regulatory offense" includes an offense under Section 76-9-701 or 76-10-105.
- (c) "Minor regulatory offense" does not include:
 - (i) any drug possession offense;
 - (ii) an offense under Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving;
 - (iii) an offense under Sections 73-18-13 through 73-18-13.6;
 - (iv) except as provided in Subsection (12)(b), an offense under Title 76, Utah Criminal Code; or
 - (v) any local ordinance that is substantially similar to an offense listed in Subsections (12)(c)(i) through (iv).
- (13) "Petitioner" means an individual applying for expungement under this chapter.
- (14) "Plea in abeyance" means the same as that term is defined in Section 77-2a-1.
- (15)
 - (a) "Traffic offense" means, except as provided in Subsection (15)(b):
 - (i) an infraction, a class B misdemeanor offense, or a class C misdemeanor offense under Title 41, Chapter 6a, Traffic Code;
 - (ii) an infraction, a class B misdemeanor offense, or a class C misdemeanor offense under Title 53, Chapter 3, Part 2, Driver Licensing Act;
 - (iii) an infraction, a class B misdemeanor offense, or a class C misdemeanor offense under Title 73, Chapter 18, State Boating Act; and
 - (iv) all local ordinances that are substantially similar to an offense listed in Subsections (15)(a)(i) through (iii).
 - (b) "Traffic offense" does not mean:
 - (i) an offense under Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving;
 - (ii) an offense under Sections 73-18-13 through 73-18-13.6; or
 - (iii) any local ordinance that is substantially similar to an offense listed in Subsection (15)(b)(i) or (ii).
- (16) "Traffic offense case" means that each offense in the case is a traffic offense.

Amended by Chapter 265, 2023 General Session

77-40a-102 Applicability to juvenile court records.

This chapter does not apply to an expungement of a record for an adjudication under Section 80-6-701 or a nonjudicial adjustment, as that term is defined in Section 80-1-102, of an offense in the juvenile court.

Renumbered and Amended by Chapter 250, 2022 General Session

77-40a-103 Retroactive application.

The provisions of this chapter apply retroactively to all arrests and convictions regardless of the date on which the arrests were made or convictions were entered.

Renumbered and Amended by Chapter 250, 2022 General Session

77-40a-104 Department rulemaking authority.

In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department may make rules to:

- (1) implement procedures for processing an automatic expungement;
- (2) implement procedures for applying for certificates of eligibility;
- (3) specify procedures for receiving a certificate of eligibility;
- (4) create forms and determine information necessary to be provided to the bureau; and
- (5) implement procedures for the confirmation of an expungement under Subsection 77-40a-403(2).

Amended by Chapter 265, 2023 General Session

77-40a-105 Eligibility for removing the link between personal identifying information and court case dismissed.

- (1) As used in this section:
 - (a) "Domestic violence offense" means the same as that term is defined in Section 77-36-1.
 - (b) "Personal identifying information" means:
 - (i) a current name, former name, nickname, or alias; and
 - (ii) date of birth.
- (2)
 - (a) An individual whose criminal case is dismissed, or civil case filed in accordance with Title 78B, Chapter 7, Protective Orders and Stalking Injunctions, is denied, may move the court for an order to remove the link between the individual's personal identifying information from the dismissed case in any publicly searchable database of the Utah state courts.
 - (b) If a motion is filed under Subsection (2)(a), the court shall grant the motion if:
 - (i) 30 days have passed from the day on which the case is dismissed or denied;
 - (ii) no appeal is filed for the dismissed or denied case within the 30-day period described in Subsection (2)(b)(i); and
 - (iii) no charge in the case was a domestic violence offense.
- (3) Removing the link to personal identifying information of a court record under Subsection (2) does not affect a prosecuting, arresting, or other agency's records.
- (4) A case history, unless expunged under this chapter, remains public and accessible through a search by case number.

Renumbered and Amended by Chapter 250, 2022 General Session

77-40a-107 Expungement data requirements -- Report.

- (1) No later than November 1 of each year, the Administrative Office of the Courts shall submit a written report to the Executive Offices and Criminal Justice Appropriations Subcommittee and the Judiciary Interim Committee regarding expungement data for the preceding fiscal year, including:
 - (a) the number of petitions filed for expungement in the district, justice, and juvenile courts;
 - (b) the number of petitions granted for expungement in the district, justice, and juvenile courts;
 - (c) the number of orders issued for an automatic expungement by the district, justice, and juvenile courts;
 - (d) the total number of individuals for whom at least one automatic expungement order was issued by the district, justice, or juvenile court; and
 - (e) the total number of individuals for whom at least one petition-based expungement order was issued by the district, justice, or juvenile court.

- (2) No later than November 1 of each year, the bureau shall submit a written report to the Executive Offices and Criminal Justice Appropriations Subcommittee and the Judiciary Interim Committee regarding expungement data for the preceding fiscal year, including:
- (a) the number of applications for expungement received by the bureau;
 - (b) the number of certificates of eligibility issued by the bureau; and
 - (c) the number of orders for expungement received by the bureau.

Enacted by Chapter 384, 2022 General Session

Amended by Chapter 384, 2022 General Session, (Coordination Clause)

Part 2

Automatic Expungement and Deletion

77-40a-201 Automatic expungement procedure.

- (1)
- (a) Except as provided in Subsection (1)(b) and subject to Section 77-40a-203, this section governs the process for the automatic expungement of all records in:
 - (i) except as provided in Subsection (2)(e), a case that resulted in an acquittal on all charges;
 - (ii) except as provided in Subsection (3)(e), a case that is dismissed with prejudice; or
 - (iii) a case that is a clean slate eligible case.
 - (b) This section does not govern automatic expungement of a traffic offense.
- (2)
- (a) Except as provided in Subsection (2)(e), the process for automatic expungement of records for a case that resulted in an acquittal on all charges is as described in Subsections (2)(b) through (d).
 - (b) If a court determines that the requirements for automatic expungement have been met, a district court or justice court shall:
 - (i) issue, without a petition, an expungement order; and
 - (ii) based on information available, notify the bureau and the prosecuting agency identified in the case of the order of expungement.
 - (c) The bureau, upon receiving notice from the court, shall notify the law enforcement agencies identified in the case of the order of expungement.
 - (d) For a case resulting in an acquittal on all charges on or before May 1, 2020, that is automatically expunged under this Subsection (2), a law enforcement agency shall expunge records for the case within one year after the day on which the law enforcement agency receives notice from the bureau.
 - (e) For purposes of this section, a case that resulted in acquittal on all charges does not include a case that resulted in an acquittal because the individual is found not guilty by reason of insanity.
- (3)
- (a) The process for an automatic expungement of a case that is dismissed with prejudice is as described in Subsections (3)(b) through (d).
 - (b) If a court determines that the requirements for automatic expungement have been met, a district court or justice court shall:
 - (i) issue, without a petition, an expungement order; and

- (ii) based on information available, notify the bureau and the prosecuting agency identified in the case of the order of expungement.
 - (c) The bureau, upon receiving notice from the court, shall notify the law enforcement agencies identified in the case of the order of expungement.
 - (d) For a case dismissed on or before May 1, 2020, that is automatically expunged under this Subsection (3), a law enforcement agency shall expunge records for the case within one year after the day on which the law enforcement agency receives notice from the bureau.
 - (e) For purposes of this Subsection (3), a case that is dismissed with prejudice does not include a case that is dismissed with prejudice as a result of successful completion of a plea in abeyance agreement governed by Subsection 77-2a-3(2)(b).
- (4)
- (a) The process for the automatic expungement of a clean slate eligible case is as described in Subsections (4)(b) through (g) and in accordance with any rules made by the Judicial Council or the Supreme Court.
 - (b) A prosecuting agency, that has complied with Rule 42 of the Utah Rules of Criminal Procedure, shall receive notice on a monthly basis for any case prosecuted by that agency that appears to be a clean slate eligible case.
 - (c) Within 35 days of the day on which the notice described in Subsection (4)(b) is sent, the prosecuting agency shall provide written notice in accordance with any rules made by the Judicial Council or the Supreme Court if the prosecuting agency objects to an automatic expungement for any of the following reasons:
 - (i) after reviewing the agency record, the prosecuting agency believes that the case does not meet the definition of a clean slate eligible case;
 - (ii) the individual has not paid court-ordered restitution to the victim; or
 - (iii) the prosecuting agency has a reasonable belief, grounded in supporting facts, that an individual with a clean slate eligible case is continuing to engage in criminal activity within or outside of the state.
 - (d)
 - (i) If a prosecuting agency provides written notice of an objection for a reason described in Subsection (4)(c) within 35 days of the day on which the notice described in Subsection (4)(b) is sent, the court may not proceed with automatic expungement.
 - (ii) If 35 days pass from the day on which the notice described in Subsection (4)(b) is sent without the prosecuting agency providing written notice of an objection for a reason described in Subsection (4)(c), the court may proceed with automatic expungement.
 - (e) If a court determines that the requirements for automatic expungement have been met, a district court or justice court shall:
 - (i) issue, without a petition, an expungement order; and
 - (ii) based on information available, notify the bureau and the prosecuting agency identified in the case of the order of expungement.
 - (f) The bureau, upon receiving notice from the court, shall notify the law enforcement agencies identified in the case of the order of expungement.
 - (g) For a clean slate case adjudicated or dismissed on or before May 1, 2020, that is automatically expunged under this Subsection (4), a law enforcement agency shall expunge records for the case within one year after the day on which the law enforcement agency receives notice from the bureau.
- (5) Nothing in this section precludes an individual from filing a petition for expungement of records that are eligible for automatic expungement under this section if an automatic expungement has not occurred pursuant to this section.

- (6) An automatic expungement performed under this section does not preclude a person from requesting access to expunged records in accordance with Section 77-40a-403 or 77-40a-404.
- (7)
- (a) The Judicial Council and the Supreme Court shall make rules to govern the process for automatic expungement.
 - (b) The rules under Subsection (7)(a) may authorize:
 - (i) a presiding judge of a district court to issue an expungement order for any case when the requirements for automatic expungement are met; and
 - (ii) a presiding judge of a justice court to issue an expungement order for any justice court case within the presiding judge's judicial district when the requirements for automatic expungement are met.

Renumbered and Amended by Chapter 250, 2022 General Session

77-40a-202 Automatic deletion for traffic offense.

- (1) Subject to Section 77-40a-203, records for the following traffic offenses shall be deleted without a court order or notice to the prosecuting agency:
- (a) a traffic offense case that resulted in an acquittal on all charges;
 - (b) a traffic offense case that is dismissed with prejudice, except for a case that is dismissed with prejudice as a result of successful completion of a plea in abeyance agreement governed by Subsection 77-2a-3(2)(b); or
 - (c) a traffic offense case for which the following time periods have elapsed from the day on which the case is adjudicated:
 - (i) at least five years for a class C misdemeanor or an infraction; or
 - (ii) at least six years for a class B misdemeanor.
- (2) The Judicial Council shall make rules to provide an ongoing process for identifying and deleting records on all traffic offenses described in Subsection (1).

Renumbered and Amended by Chapter 250, 2022 General Session

77-40a-203 Time periods for expungement or deletion -- Identification and processing of clean slate eligible cases.

- (1) Reasonable efforts within available funding shall be made to expunge or delete a case as quickly as is practicable with the goal of:
- (a) for cases adjudicated on or after May 1, 2020:
 - (i) expunging a case that resulted in an acquittal on all charges, 60 days after the acquittal;
 - (ii) expunging a case that resulted in a dismissal with prejudice, other than a case that is dismissed with prejudice as a result of successful completion of a plea in abeyance agreement governed by Subsection 77-2a-3(2)(b), 180 days after:
 - (A) for a case in which no appeal was filed, the day on which the entire case against the individual is dismissed with prejudice; or
 - (B) for a case in which an appeal was filed, the day on which a court issues a final unappealable order;
 - (iii) expunging a clean slate eligible case that is not a traffic offense within 30 days of the court, in accordance with Section 77-40a-201, determining that the requirements for expungement have been satisfied; or
 - (iv) deleting a traffic offense case described in Subsection 77-40a-202(1)(c) upon identification; and

- (b) for cases adjudicated before May 1, 2020, expunging or deleting a case within one year of the day on which the case is identified as eligible for automatic expungement or deletion.
- (2)
 - (a) The Judicial Council or the Supreme Court shall make rules governing the identification and processing of clean slate eligible cases in accordance with Section 77-40a-201.
 - (b) Reasonable efforts shall be made to identify and process all clean slate eligible cases in accordance with Section 77-40a-201.
 - (c) An individual does not have a cause of action for damages as a result of the failure to identify an individual's case as a clean slate eligible case or to automatically expunge or delete the records of a clean slate eligible case.

Renumbered and Amended by Chapter 250, 2022 General Session

Part 3

Petition for Expungement

77-40a-301 Application for certificate of eligibility for expungement -- Penalty for false or misleading information on application.

- (1) If an individual seeks to expunge the individual's criminal record in regard to an arrest, investigation, detention, or conviction, the individual shall:
 - (a) except as provided in Subsection 77-40a-305(3) or (4), apply to the bureau for a certificate of eligibility for expungement of the criminal record and pay the application fee as described in Section 77-40a-304;
 - (b) if the individual is qualified to receive a certificate of eligibility, pay the issuance fee for the certificate of eligibility as described in Section 77-40a-304; and
 - (c) file a petition for expungement in accordance with Section 77-40a-305.
- (2)
 - (a) An individual who intentionally or knowingly provides any false or misleading information to the bureau when applying for a certificate of eligibility is guilty of a class B misdemeanor and subject to prosecution under Section 76-8-504.6.
 - (b) Regardless of whether the individual is prosecuted, the bureau may deny a certificate of eligibility to anyone who knowingly provides false information on an application.

Enacted by Chapter 250, 2022 General Session

77-40a-302 Requirements for certificate of eligibility to expunge records of arrest, investigation, and detention.

- (1) Except as provided in Subsection (2), if a petitioner is arrested or charged with an offense, the petitioner is eligible to receive a certificate of eligibility from the bureau to expunge records of the arrest, investigation, and detention in the case for the offense if:
 - (a) at least 30 days have passed after the day on which the individual is arrested or charged for the offense;
 - (b) one of the following occurs:
 - (i) an investigating law enforcement agency and the prosecuting attorney have screened the case and determined that no charges will be filed against the petitioner;
 - (ii) all charges in the case are dismissed with prejudice;

- (iii) if a charge in the case is dismissed without prejudice or without condition:
 - (A) the prosecuting attorney consents in writing to the issuance of a certificate of eligibility; or
 - (B) at least 180 days have passed after the day on which the charge is dismissed;
 - (iv) the petitioner is acquitted at trial on all of the charges in the case; or
 - (v) the statute of limitations expires on all of the charges in the case; and
- (c)
- (i) there is a conviction in the case for a traffic offense that is a class C misdemeanor or an infraction, at least three years have passed after the day on which the petitioner was convicted of the traffic offense; or
 - (ii) there is a conviction in the case for a traffic offense that is a class B misdemeanor, at least four years have passed after the day on which the petitioner was convicted of the traffic offense.
- (2) A petitioner is not eligible for a certificate of eligibility under Subsection (1) if:
- (a) there is a criminal proceeding for a misdemeanor or felony offense pending against the petitioner, unless the criminal proceeding is for a traffic offense;
 - (b) there is a plea in abeyance for a misdemeanor or felony offense pending against the petitioner, unless the plea in abeyance is for a traffic offense;
 - (c) the petitioner is currently incarcerated, on parole, or on probation, unless the petitioner is on probation or parole for an infraction, a traffic offense, or a minor regulatory offense; or
 - (d) there is a criminal protective order or a criminal stalking injunction in effect for the case.

Amended by Chapter 265, 2023 General Session

77-40a-303 Requirements for a certificate of eligibility to expunge records of a conviction.

- (1) Except as otherwise provided by this section, a petitioner is eligible to receive a certificate of eligibility from the bureau to expunge the records of a conviction if:
- (a) the petitioner has paid in full all fines and interest ordered by the court related to the conviction for which expungement is sought;
 - (b) the petitioner has paid in full all restitution ordered by the court under Section 77-38b-205; and
 - (c) the following time periods have passed after the day on which the petitioner was convicted or released from incarceration, parole, or probation, whichever occurred last, for the conviction that the petitioner seeks to expunge:
 - (i) 10 years for the conviction of a misdemeanor under Subsection 41-6a-501(2);
 - (ii) 10 years for the conviction of a felony for operating a motor vehicle with any amount of a controlled substance in an individual's body and causing serious bodily injury or death, as codified before May 4, 2022, Laws of Utah 2021, Chapter 236, Section 1, Subsection 58-37-8(2)(g);
 - (iii) seven years for the conviction of a felony;
 - (iv) five years for the conviction of a drug possession offense that is a felony;
 - (v) five years for the conviction of a class A misdemeanor;
 - (vi) four years for the conviction of a class B misdemeanor; or
 - (vii) three years for the conviction of a class C misdemeanor or infraction.
- (2) A petitioner is not eligible to receive a certificate of eligibility from the bureau to expunge the records of a conviction under Subsection (1) if:
- (a) except as provided in Subsection (3), the conviction for which expungement is sought is:
 - (i) a capital felony;
 - (ii) a first degree felony;

- (iii) a felony conviction of a violent felony as defined in Subsection 76-3-203.5(1)(c)(i);
- (iv) a felony conviction described in Subsection 41-6a-501(2);
- (v) an offense, or a combination of offenses, that would require the individual to register as a sex offender, as defined in Section 77-41-102; or
- (vi) a registerable child abuse offense as defined in Subsection 77-43-102(2);
- (b) there is a criminal proceeding for a misdemeanor or felony offense pending against the petitioner, unless the criminal proceeding is for a traffic offense;
- (c) there is a plea in abeyance for a misdemeanor or felony offense pending against the petitioner, unless the plea in abeyance is for a traffic offense;
- (d) the petitioner is currently incarcerated, on parole, or on probation, unless the petitioner is on probation or parole for an infraction, a traffic offense, or a minor regulatory offense;
- (e) the petitioner intentionally or knowingly provides false or misleading information on the application for a certificate of eligibility;
- (f) there is a criminal protective order or a criminal stalking injunction in effect for the case; or
- (g) the bureau determines that the petitioner's criminal history makes the petitioner ineligible for a certificate of eligibility under Subsection (4) or (5).
- (3) Subsection (2)(a) does not apply to a conviction for a qualifying sexual offense, as defined in Section 76-3-209, if, at the time of the offense, a petitioner who committed the offense was at least 14 years old but under 18 years old, unless the petitioner was convicted by a district court as an adult in accordance with Title 80, Chapter 6, Part 5, Transfer to District Court.
- (4) Subject to Subsections (6), (7), and (8), a petitioner is not eligible to receive a certificate of eligibility if, at the time the petitioner seeks the certificate of eligibility, the bureau determines that the petitioner's criminal history, including previously expunged convictions, contains any of the following:
 - (a) two or more felony convictions other than for drug possession offenses, each of which is contained in a separate criminal episode;
 - (b) any combination of three or more convictions other than for drug possession offenses that include two class A misdemeanor convictions, each of which is contained in a separate criminal episode;
 - (c) any combination of four or more convictions other than for drug possession offenses that include three class B misdemeanor convictions, each of which is contained in a separate criminal episode; or
 - (d) five or more convictions other than for drug possession offenses of any degree whether misdemeanor or felony, each of which is contained in a separate criminal episode.
- (5) Subject to Subsections (7) and (8), a petitioner is not eligible to receive a certificate of eligibility if, at the time the petitioner seeks the certificate of eligibility, the bureau determines that the petitioner's criminal history, including previously expunged convictions, contains any of the following:
 - (a) three or more felony convictions for drug possession offenses, each of which is contained in a separate criminal episode; or
 - (b) any combination of five or more convictions for drug possession offenses, each of which is contained in a separate criminal episode.
- (6) If the petitioner's criminal history contains convictions for both a drug possession offense and a non-drug possession offense arising from the same criminal episode, the bureau shall count that criminal episode as a conviction under Subsection (4) if any non-drug possession offense in that episode:
 - (a) is a felony or class A misdemeanor; or

- (b) has the same or a longer waiting period under Subsection (1)(c) than any drug possession offense in that episode.
- (7) Except as provided in Subsection (8), if at least 10 years have passed after the day on which the petitioner was convicted or released from incarceration, parole, or probation, whichever occurred last, for all convictions:
 - (a) each numerical eligibility limit under Subsections (4)(a) and (b) shall be increased by one; and
 - (b) each numerical eligibility limit under Subsections (4)(c) and (d) is not applicable if the highest level of convicted offense in the criminal episode is:
 - (i) a class B misdemeanor;
 - (ii) a class C misdemeanor;
 - (iii) a drug possession offense if none of the non-drug possession offenses in the criminal episode are a felony or a class A misdemeanor; or
 - (iv) an infraction.
- (8) When determining whether a petitioner is eligible for a certificate of eligibility under Subsection (4), (5), or (7), the bureau may not consider a petitioner's pending case or prior conviction for:
 - (a) an infraction;
 - (b) a traffic offense;
 - (c) a minor regulatory offense; or
 - (d) a clean slate eligible case that was automatically expunged in accordance with Section 77-40a-201.
- (9) If the petitioner received a pardon before May 14, 2013, from the Utah Board of Pardons and Parole, the petitioner is entitled to an expungement order for all pardoned crimes in accordance with Section 77-27-5.1.

Amended by Chapter 265, 2023 General Session

77-40a-304 Certificate of eligibility process -- Issuance of certificate -- Fees.

- (1)
 - (a) When a petitioner applies for a certificate of eligibility as described in Subsection 77-40a-301(1), the bureau shall perform a check of records of governmental agencies, including national criminal data bases, to determine whether the petitioner is eligible to receive a certificate of eligibility under this chapter.
 - (b) For purposes of determining eligibility under this chapter, the bureau may review records of arrest, investigation, detention, and conviction that have been previously expunged, regardless of the jurisdiction in which the expungement occurred.
 - (c) Once the eligibility process is complete, the bureau shall notify the petitioner.
 - (d) If the petitioner meets all of the criteria under Section 77-40a-302 or 77-40a-303:
 - (i) the bureau shall issue a certificate of eligibility that is valid for a period of 180 days from the day on which the certificate is issued;
 - (ii) the bureau shall provide a petitioner with an identification number for the certificate of eligibility; and
 - (iii) the petitioner shall pay the issuance fee established by the department as described in Subsection (2).
 - (e) If, after reasonable research, a disposition for an arrest on the criminal history file is unobtainable, the bureau may issue a special certificate giving determination of eligibility to the court, except that the bureau may not issue the special certificate if:
 - (i) there is a criminal proceeding for a misdemeanor or felony offense pending against the petitioner, unless the criminal proceeding is for a traffic offense;

- (ii) there is a plea in abeyance for a misdemeanor or felony offense pending against the petitioner, unless the plea in abeyance is for a traffic offense; or
 - (iii) the petitioner is currently incarcerated, on parole, or on probation, unless the petitioner is on probation or parole for an infraction, a traffic offense, or a minor regulatory offense.
- (2)
- (a) The bureau shall charge application and issuance fees for a certificate of eligibility or special certificate in accordance with the process in Section 63J-1-504.
 - (b) The application fee shall be paid at the time the petitioner submits an application for a certificate of eligibility to the bureau.
 - (c) If the bureau determines that the issuance of a certificate of eligibility or special certificate is appropriate, the petitioner will be charged an additional fee for the issuance of a certificate of eligibility or special certificate unless Subsection (2)(d) applies.
 - (d) An issuance fee may not be assessed against a petitioner who qualifies for a certificate of eligibility under Section 77-40a-302 unless the charges were dismissed pursuant to a plea in abeyance agreement under Title 77, Chapter 2a, Pleas in Abeyance, or a diversion agreement under Title 77, Chapter 2, Prosecution, Screening, and Diversion.
 - (e) Funds generated under this Subsection (2) shall be deposited in the General Fund as a dedicated credit by the department to cover the costs incurred in determining eligibility.
- (3) The bureau shall include on the certificate of eligibility all information that is needed for the court to issue a valid expungement order.
- (4) The bureau shall provide clear written instructions to the petitioner that explain:
- (a) the process for a petition for expungement; and
 - (b) what is required of the petitioner to complete the process for a petition for expungement.

Amended by Chapter 265, 2023 General Session

77-40a-305 Petition for expungement -- Prosecutorial responsibility -- Hearing.

- (1)
- (a) The petitioner shall file a petition for expungement, in accordance with the Utah Rules of Criminal Procedure, that includes the identification number for the certificate of eligibility described in Subsection 77-40a-304(1)(d)(ii).
 - (b) Information on a certificate of eligibility is incorporated into a petition by reference to the identification number for the certificate of eligibility.
- (2)
- (a) If a petition for expungement is filed under Subsection (1)(a), the court shall obtain a certificate of eligibility from the bureau.
 - (b) A court may not accept a petition for expungement if the certificate of eligibility is no longer valid as described in Subsection 77-40a-304(1)(d)(i).
- (3) Notwithstanding Subsection (2), the petitioner may file a petition for expungement of a traffic offense case without obtaining a certificate of eligibility if:
- (a)
 - (i) for a traffic offense case with a class C misdemeanor or infraction, at least three years have passed after the day on which the petitioner was convicted; or
 - (ii) for a traffic offense case with a class B misdemeanor, at least four years have passed after the day on which the petitioner was convicted;
 - (b) there is no traffic offense case pending against the petitioner;
 - (c) there is no plea in abeyance for a traffic offense case pending against the petitioner; and
 - (d) the petitioner is not currently on probation for a traffic offense case.

- (4) Notwithstanding Subsection (2), a petitioner may file a petition for expungement of a record for a conviction related to cannabis possession without a certificate of eligibility if the petition demonstrates that:
- (a) the petitioner had, at the time of the relevant arrest or citation leading to the conviction, a qualifying condition, as that term is defined in Section 26B-4-201; and
 - (b) the possession of cannabis in question was in a form and an amount to medicinally treat the qualifying condition described in Subsection (4)(a).
- (5)
- (a) The court shall provide notice of a filing of a petition and certificate of eligibility to the prosecutorial office that handled the court proceedings within three days after the day on which the petitioner's filing fee is paid or waived.
 - (b) If there were no court proceedings, the court shall provide notice of a filing of a petition and certificate of eligibility to the county attorney's office in the jurisdiction where the arrest occurred.
 - (c) If the prosecuting agency with jurisdiction over the arrest, investigation, detention, or conviction, was a city attorney's office, the county attorney's office in the jurisdiction where the arrest occurred shall immediately notify the city attorney's office that the county attorney's office has received a notice of a filing of a petition for expungement.
- (6)
- (a) Upon receipt of a notice of a filing of a petition for expungement of a conviction or a charge dismissed in accordance with a plea in abeyance, the prosecuting attorney shall make a reasonable effort to provide notice to any victim of the conviction or charge.
 - (b) The notice under Subsection (6)(a) shall:
 - (i) include a copy of the petition, certificate of eligibility, statutes, and rules applicable to the petition;
 - (ii) state that the victim has a right to object to the expungement; and
 - (iii) provide instructions for registering an objection with the court.
- (7)
- (a) The prosecuting attorney may respond to the petition by filing a recommendation or objection with the court within 35 days after the day on which the notice of the filing of the petition is sent by the court to the prosecuting attorney.
 - (b) If there is a victim of the offense for which expungement is sought, the victim may respond to the petition by filing a recommendation or objection with the court within 60 days after the day on which the petition for expungement was filed with the court.
- (8)
- (a) The court may request a written response to the petition from the Division of Adult Probation and Parole within the Department of Corrections.
 - (b) If requested, the response prepared by the Division of Adult Probation and Parole shall include:
 - (i) the reasons probation was terminated; and
 - (ii) certification that the petitioner has completed all requirements of sentencing and probation or parole.
 - (c) The Division of Adult Probation and Parole shall provide a copy of the response to the petitioner and the prosecuting attorney.
- (9) The petitioner may respond in writing to any objections filed by the prosecuting attorney or the victim and the response prepared by the Division of Adult Probation and Parole within 14 days after the day on which the objection or response is received.
- (10)

- (a) If the court receives an objection concerning the petition from any party, the court shall set a date for a hearing and notify the petitioner and the prosecuting attorney of the date set for the hearing.
 - (b) The prosecuting attorney shall notify the victim of the date set for the hearing.
 - (c) The petitioner, the prosecuting attorney, the victim, and any other person who has relevant information about the petitioner may testify at the hearing.
 - (d) The court shall review the petition, the certificate of eligibility, and any written responses submitted regarding the petition.
- (11) If no objection is received within 60 days from the day on which the petition for expungement is filed with the court, the expungement may be granted without a hearing.

Amended by Chapter 265, 2023 General Session

Amended by Chapter 330, 2023 General Session

77-40a-306 Order of expungement.

- (1) If a petition is filed in accordance with Section 77-40a-305, the court shall issue an order of expungement if the court finds, by clear and convincing evidence, that:
- (a) except as provided in Subsection 77-40a-305(3) or (4), the petition and certificate of eligibility are sufficient;
 - (b) the statutory requirements have been met;
 - (c) if the petitioner seeks expungement after a case is dismissed without prejudice or without condition, the prosecuting attorney provided written consent and has not filed and does not intend to refile related charges;
 - (d) if the petitioner seeks expungement without a certificate of eligibility for expungement under Subsection 77-40a-305(4) for a record of conviction related to cannabis possession:
 - (i) the petitioner had, at the time of the relevant arrest or citation leading to the conviction, a qualifying condition, as that term is defined in Section 26B-4-201; and
 - (ii) the possession of cannabis in question was in a form and an amount to medicinally treat the qualifying condition described in Subsection (1)(d)(i);
 - (e) if an objection is received, the petition for expungement is for a charge dismissed in accordance with a plea in abeyance agreement, and the charge is an offense eligible to be used for enhancement, there is good cause for the court to grant the expungement; and
 - (f) the interests of the public would not be harmed by granting the expungement.
- (2)
- (a) If the court denies a petition described in Subsection (1)(c) because the prosecuting attorney intends to refile charges, the petitioner may apply again for a certificate of eligibility if charges are not refiled within 180 days after the day on which the court denies the petition.
 - (b) A prosecuting attorney who opposes an expungement of a case dismissed without prejudice, or without condition, shall have a good faith basis for the intention to refile the case.
 - (c) A court shall consider the number of times that good faith basis of intention to refile by the prosecuting attorney is presented to the court in making the court's determination to grant the petition for expungement described in Subsection (1)(c).
- (3) If the court grants a petition described in Subsection (1)(e), the court shall make the court's findings in a written order.
- (4) A court may not expunge a conviction of an offense for which a certificate of eligibility may not be, or should not have been, issued under Section 77-40a-302 or 77-40a-303.

Amended by Chapter 330, 2023 General Session

Part 4

Distribution and Use of Expunged Records

77-40a-401 Distribution of order -- Redaction -- Receipt of order -- Bureau requirements -- Administrative proceedings.

- (1)
 - (a) The bureau, upon receiving notice from the court, shall notify all criminal justice agencies affected by the expungement order.
 - (b) For purposes of Subsection (1)(a), the bureau may not notify the Board of Pardons and Parole of an expungement order if the individual has never been:
 - (i) sentenced to prison in this state; or
 - (ii) under the jurisdiction of the Board of Pardons and Parole.
 - (c) A petitioner may deliver copies of the expungement to all criminal justice agencies affected by the order of expungement.
 - (d) An individual, who receives an expungement order under Section 77-27-5.1, shall pay a processing fee to the bureau, established in accordance with the process in Section 63J-1-504, before the bureau's record may be expunged.
- (2) Unless otherwise provided by law or ordered by a court to respond differently, an individual or agency who has received an expungement of an arrest or conviction under this chapter or Section 77-27-5.1 may respond to any inquiry as though the arrest or conviction did not occur.
- (3) The bureau shall forward a copy of the expungement order to the Federal Bureau of Investigation.
- (4) An agency receiving an expungement order shall expunge the individual's identifying information contained in records in the agency's possession relating to the incident for which expungement is ordered.
- (5) Unless ordered by a court to do so, or in accordance with Section 77-40a-403, a government agency or official may not divulge information or records that have been expunged.
- (6)
 - (a) An expungement order may not restrict an agency's use or dissemination of records in the agency's ordinary course of business until the agency has received a copy of the order.
 - (b) Any action taken by an agency after issuance of the order but prior to the agency's receipt of a copy of the order may not be invalidated by the order.
- (7) An expungement order may not:
 - (a) terminate or invalidate any pending administrative proceedings or actions of which the individual had notice according to the records of the administrative body prior to issuance of the expungement order;
 - (b) affect the enforcement of any order or findings issued by an administrative body pursuant to the administrative body's lawful authority prior to issuance of the expungement order;
 - (c) remove any evidence relating to the individual including records of arrest, which the administrative body has used or may use in these proceedings; or
 - (d) prevent an agency from maintaining, sharing, or distributing any record required by law.

Amended by Chapter 265, 2023 General Session

77-40a-402 Distribution for order for vacatur.

- (1) An individual who receives an order for vacatur under Subsection 78B-9-108(2) shall be responsible for delivering a copy of the order for vacatur to all affected criminal justice agencies and officials.
- (2) To complete delivery of the order for vacatur to the bureau, the individual shall complete and attach to the order for vacatur an application for a certificate of eligibility for expungement, including identifying information and fingerprints, in accordance with Section 77-40a-301.
- (3) Except as otherwise provided in this section, the bureau shall treat the order for vacatur and attached certificate of eligibility for expungement the same as a valid order for expungement under Section 77-40a-401.
- (4) Unless otherwise provided by law or ordered by a court to respond differently, an individual who has received a vacatur of conviction under Subsection 78B-9-108(2) may respond to any inquiry as though the conviction did not occur.
- (5) The bureau shall forward a copy of the order for vacatur to the Federal Bureau of Investigation.
- (6) An agency receiving an order for vacatur shall expunge the individual's identifying information contained in records in the agency's possession relating to the incident for which vacatur is ordered.
- (7) A government agency or official may not divulge information contained in a record of arrest, investigation, detention, or conviction after receiving an order for vacatur to any person or agency, except for:
 - (a) the individual for whom vacatur was ordered; or
 - (b) Peace Officer Standards and Training, in accordance with Section 53-6-203 and Subsection 77-40a-403(4)(b).
- (8) The bureau may not count vacated convictions against any future expungement eligibility.

Amended by Chapter 265, 2023 General Session

77-40a-403 Retention and release of expunged records -- Agencies.

- (1)
 - (a) The bureau, after receiving an expungement order, shall keep, index, and maintain all expunged records of arrests and convictions.
 - (b) Any agency, other than the bureau, receiving an expungement order shall develop and implement a process to identify and maintain an expunged record.
- (2)
 - (a) An agency shall provide an individual who receives an expungement with written confirmation that the agency has expunged all records of the offense for which the individual received the expungement if the individual requests confirmation from the agency.
 - (b) The bureau may charge a fee for providing a written confirmation under Subsection (2)(a) in accordance with the process in Section 63J-1-504.
- (3)
 - (a) An employee of the bureau, or any agency with an expunged record, may not divulge any information contained in the expunged record to any person or agency without a court order unless:
 - (i) specifically authorized by statute; or
 - (ii) subject to Subsection (3)(b), the information in an expunged record is being shared with another agency through a records management system that both agencies use for the purpose of record management.

- (b) An agency with a records management system may not disclose any information in an expunged record with another agency or person that does not use the records management system for the purpose of record management.
- (4) The following entities or agencies may receive information contained in expunged records upon specific request:
 - (a) the Board of Pardons and Parole;
 - (b) Peace Officer Standards and Training;
 - (c) federal authorities if required by federal law;
 - (d) the State Board of Education;
 - (e) the Commission on Criminal and Juvenile Justice, for purposes of investigating applicants for judicial office; and
 - (f) a research institution or an agency engaged in research regarding the criminal justice system if:
 - (i) the research institution or agency provides a legitimate research purpose for gathering information from the expunged records;
 - (ii) the research institution or agency enters into a data sharing agreement with the court or agency with custody of the expunged records that protects the confidentiality of any identifying information in the expunged records;
 - (iii) any research using expunged records does not include any individual's name or identifying information in any product of that research; and
 - (iv) any product resulting from research using expunged records includes a disclosure that expunged records were used for research purposes.
- (5) Except as otherwise provided by this section or by court order, a person, an agency, or an entity authorized by this section to view expunged records may not reveal or release any information obtained from the expunged records to anyone outside the specific request, including distribution on a public website.
- (6) A prosecuting attorney may communicate with another prosecuting attorney, or another prosecutorial agency, regarding information in an expunged record that includes a conviction, or a charge dismissed as a result of a successful completion of a plea in abeyance agreement, for:
 - (a) stalking as described in Section 76-5-106.5;
 - (b) a domestic violence offense as defined in Section 77-36-1;
 - (c) an offense that would require the individual to register as a sex offender, as defined in Section 77-41-102; or
 - (d) a weapons offense under Title 76, Chapter 10, Part 5, Weapons.
- (7) Except as provided in Subsection (9), a prosecuting attorney may not use an expunged record for the purpose of a sentencing enhancement or as a basis for charging an individual with an offense that requires a prior conviction.
- (8) The bureau may also use the information in the bureau's index as provided in Section 53-5-704.
- (9) If, after obtaining an expungement, an individual is charged with a felony or an offense eligible for enhancement based on a prior conviction, the state may petition the court to open the expunged records upon a showing of good cause.
- (10)
 - (a) For judicial sentencing, a court may order any records expunged under this chapter or Section 77-27-5.1 to be opened and admitted into evidence.
 - (b) The records are confidential and are available for inspection only by the court, parties, counsel for the parties, and any other person who is authorized by the court to inspect them.

- (c) At the end of the action or proceeding, the court shall order the records expunged again.
- (d) Any person authorized by this Subsection (10) to view expunged records may not reveal or release any information obtained from the expunged records to anyone outside the court.
- (11) Records released under this chapter are classified as protected under Section 63G-2-305 and are accessible only as provided under Title 63G, Chapter 2, Part 2, Access to Records, and Subsection 53-10-108(2)(k) for records held by the bureau.

Amended by Chapter 265, 2023 General Session

77-40a-404 Confirmation of expungement -- Access to expunged records by individuals.

- (1) An individual who receives an expungement may request a written confirmation from an agency under Subsection 77-40a-403(2) to confirm that the agency has expunged all records of the offense for which the individual received the expungement.
- (2) The following individuals may view or obtain an expunged record under this chapter or Section 77-27-5.1:
 - (a) the petitioner or an individual who receives an automatic expungement under Section 77-40a-201;
 - (b) a law enforcement officer, who was involved in the case, for use solely in the officer's defense of a civil action arising out of the officer's involvement with the petitioner in that particular case; and
 - (c) a party to a civil action arising out of the expunged incident if the information is kept confidential and utilized only in the action.

Amended by Chapter 265, 2023 General Session

77-40a-405 Penalty for disclosure of expunged, vacated, or pardoned records.

An employee or agent of an agency that is prohibited from disseminating information from expunged, vacated, or pardoned records under Section 77-27-5.1 or 77-40a-403 who knowingly or intentionally discloses identifying information from the expunged, vacated, or pardoned record that has been pardoned, vacated, or expunged, unless allowed by law, is guilty of a class A misdemeanor.

Renumbered and Amended by Chapter 250, 2022 General Session